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United States Department of the Interior
Bureau of Land Management
Moab District
Price River Resource Area
900 North 700 East
Price, Utah 84501

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DIVISION OF
OIL GAS & MINING

STAFF REPORT

TITLE: Preliminary Opinion of Common Variety, J.R. Walker
Claims, Ben #1-18 and Bent #1-3

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Dean Nyffeler

DATE: June 19, 1992

Summary and Conclusions

It is the preliminary opinion of the author that the clay on Ben 1-18 and Bent 1-3 mining claims is proposed to be used for common variety purposes. If this is the case, then this clay is not subject to location, but rather is available for sale by the Bureau. Should this opinion be correct, any material removed will be in trespass. I recommend that the mining claims involved be examined for discovery under the mining laws. Should it be determined that this clay is common variety, I recommend that the claims be contested and that the clay involved be put up for competitive sale.

This site should furnish all the clay needed for the East Carbon Development Corporation (ECDC). The need for this project has been estimated to be up to 1,000,000 cubic yards if the landfill operates for its projected life of thirty years. These mining claims are preventing us from going forward with a competitive sale to meet this need in a timely manner.

Introduction

Montmorillonite clay exists in isolated deposits of varying sizes throughout Emery County. Several community pits have been established and depleted in both the Price and San Rafael Resource Areas. Most of this clay has been used for lining stock ponds and for facing many of the earthen dams in the area.

With the development of the East Carbon Development Corporation's landfill and the Sunnyside cogeneration plant, a demand for more sealing clay was created. The landfill, especially, promises to require large quantities of clay. This clay will be placed between neoprene liners in the waste cells.

These clay deposits are the result of the weathering of volcanic tuff. Tuff is a compacted pyroclastic deposit of volcanic ash and dust that may or may not contain up to 50 percent sediments, such as sand or clay. When weathering attacks some tuffs with a specific range of minerals, a locatable clay called bentonite results. Only one deposit in the southern part of the San Rafael Resource Area has been thought to be locatable bentonite and is being mined. The deposits of clay that have been sold for sealing ponds and dams have been locally referred to as bentonite. This has led Mr. Walker and several other people to decide, erroneously, that any light-colored clay deposit is a locatable bentonite. The true test is found in 3891.51 D of the BLM Manual and is given in the next section of this report.

On May 8, 1991, Mr. Walker filed a notice of intent to test ten sites on his Ben and Bent claims in Sections 21 and 28, T. 16 S., R. 13 E. In a telephone discussion with Mr. Walker, I convinced him to submit a request to test the same area under the 3600 regulations for salable minerals. He submitted a more detailed request to test the same ten sites and we did an environmental assessment on this proposal.

In June, the Price River Resource Area Manager authorized Mr. Walker, by letter, to conduct tests on the clay deposit. For several months, Mr. Walker indicated he would be testing the deposit as soon as his son's earthmoving equipment was available. Any testing was always a month away when we called him.

Mr. Walker, in a November telephone conversation, indicated that a million cubic yards of clay would be mined from the deposit over the life of the ECDC landfill. I informed him that Moab District policy would require a competitive sale be held. I also informed him that in order to hold the sale, all mining claims on the site would need to be relinquished. His response was that he had a "constitutional right to the mining claims." I informed him his rights were not constitutional, but based on the 1872 Mining Law, as amended.

On January 17, 1992, Mr. Walker hand delivered a letter to me in which he stated he intended to proceed under the Mining Law to mine approximately 4.81 acres adjacent to the Goodwater Spring Road. No surface disturbance beyond vehicle tracks and flagging stakes was found until this April, when it appeared that several pounds of material had been removed by hand shovel. As of May 20, 1992, no significant surface disturbance has been found.

Mining Claims Involved

The mining claims involved in this report were staked by Mr. J. R. Walker in April and May 1991. The UMC numbers are 343922

through 343942. The Bent #1-3 claims were filed as lode claims, while the Ben #1-18 were filed as placer claims.

Law and Case Law

The distinction between common varieties and uncommon varieties was first entered into law on July, 23, 1955, by the Multiple Use Mining Act of 1955 (30 USCA 611 to 615). This act reads, in part:

No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claims hereafter located under such mining laws:...

In *Kenneth McClarty v. Secretary of Interior et. al.* (408 F.2a 907, 1969) the Ninth Circuit Court of Appeals cited with approval the Department of Interior's guidelines for making a judgement on common versus uncommon variety materials. These guidelines are:

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally.
2. The mineral deposit in question must have a unique property.
3. The unique property must give the deposit a distinct and special value.
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use.
5. The distinct and special value must be reflected by the higher price which the material commands in the marketplace.

Section 3891.51D of the BLM manual states that exceptional clay can be locatable if used by industry as drilling mud, as a binder in steel manufacture, or in foundry industries U.S. v. Kaycee Bentonite Corporation et al., 64 IBLA 183 (1982). Clay used for the manufacture of common-types brick and heavy clay products are not locatable U.S. v. Thomas Peck et al., 29 IBLA 357, 1977.

In U.S. v. Gunn, 7 IBLA 23U, 79 I.D. 588 (1972), a deposit of bentonite clay did not meet commercial standards for certain uses for which some other bentonite clays are suitable. It was not of a quality or quantity which could be marketed profitably for commercial purposes for which common clay cannot be sold. The clay, therefore, was not locatable.

From this language, this clay is common variety because it meets none of the criteria specified to make it uncommon. The use to

which it is to be put is a use for which many common variety materials would suffice. A validity examination of the claims involved is required in order to determine if these claims pass or fail the McClarty test.

Concurrence:

I concur:	<u>Mark E. Bailey</u> Area Manager	<u>22 June 92</u> Date
I concur:	<u>Wayne M. Lutherland, Geologist</u> Technical Reviewer	<u>June 23, 1992</u> Date
I concur:	<u>[Signature]</u> District Manager	<u>6/29/92</u> Date